Office - Supreme Court, U.S.
FILED
NOV 19 1984
ALEXANDER L. STEVAS,
CLERK

No. 84-547

IN THE
Supreme Court of the United States
OCTOBER TERM, 1984

TRAVIS WARD,
Petitioner
v.
SENTRY TITLE CO., INC.,
Respondent

PETITIONER'S REPLY TO BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

EASTLAND LAW OFFICES
HIRAM C. EASTLAND, JR.
(Counsel of Record)
Joanne E. Nitzberg
600 East Amite St.
Jackson, Mississippi
(601) 948-7545
Counsel for Petitioner
J. P. Coleman
Ackerman, Mississippi
Counsel for Petitioner

STAR GRAPHICS, INC. - (601) 981-2161 - JACKSON, MS 39206

Rohde, Chapman, Ford & How
Michael E. Rohde
Lawrence M. Wells
3500 Southland Center
400 North Olive, Box 270
Dallas, Texas

Counsel for Petitioner

INDEX

Page

Table of Authorities ii

I. INTRODUCTION 1

II. ARGUMENT 1

1. The Review Which Petitioner Rightfully Seeks Herein is Plainly an *Erie*-Justified Review of Whether a Circuit Court May Render a Decision on a State Law Issue Diametrically Opposed to the Decisions of a State's Highest Court on the Exact Issue. 1

2. Respondent Totally Failed to Distinguish the Texas Supreme Court and Fifth Circuit Authorities Relied Upon by Petitioner. These Authorities Cannot be Distinguished Since the Court of Appeals Decision Ruling that a *Prior Fiduciary Relationship* Must be *Unrelated to the Transaction at Issue to be Sufficient to Support Imposition of a Constructive Trust is Irreconcilable and Diametrically Opposed to Texas Supreme Court and Fifth Circuit Precedent Holding That a Prior Fiduciary Relationship Directly Encompassing* the Transaction at Issue is Sufficient to Support Imposition of a Constructive Trust. 2

3. A Review of the Present Action in the Context of All of the Circumstances Involved Clearly Shows That There Has Been No Abuse of Process, But Rather, That In Light of the Intervening Decision of the Texas Supreme Court Citing the Controlling Line of Authorities on the "Critical" Issue In This Case, Due Process Requires Review by This Court. 5

CONCLUSION 7

CERTIFICATE OF SERVICE 8

TABLE OF AUTHORITIES

Cases:	Page
Carey v. Piphus, 435 U.S. 247, 266 (1978)	5
General Talking Pictures Corp. v. Western Electric Co., 304 U.S. 175 (1937)	2
Ginther v. Taub, 27 Tex.Sup.Ct.J. 488 (1984)	4
Harris v. Sentry Title Co., 727 F.2d 1368,1370 (5th Cir. 1984)	2,4,5
Harris v. Sentry Title Co., 715 F.2d 941,948 (5th Cir. 1983)	2,4,5
Huffington v. Upchurch, 523 S.W. 2d 44 (Tex.Civ.App. 1975)	3
Huffington v. Upchurch, 532 S.W.2nd 576 (Tex. 1976)	3
Kremer v. Chemical Construction Corp., 456 U.S. 461, 483 (1982)	5
Lassiter v. Department of Social Services, 452 U.S. 18,24 (1981)	5
Lehman Brothers v. Schein, 416 U.S. 386 (1973)	7
Mills v. Rogers, 102 S.Ct. 2442 (1982)	7
Nolan v. Transocean Airlines, 365 U.S. 293 (1961)	7
Palmer v. Fuqua, 641 F.2d 1146 (5th Cir. 1981)	3
Rankin v. Naftalis, 557 S.W.2d 940 (Tex. 1977)	3,4
Southern Power Co. v. Public Service Company, 263 U.S. 508 (1923)	2
Western Pacific Railroad Case, 345 U.S. 247 (1952)	6
Witchita Co. v. City Bank, 306 U.S. 103 (1938)	6

I. INTRODUCTION

Petitioner Travis Ward's Petition for Writ of Certiorari to the U.S. Court of Appeals for the Fifth Circuit was filed and docketed on September 29, 1984. Thereafter, on October 26, 1984, Petitioner filed a Supplement to the Petition for a Writ of Certiorari in light of inquiries by the clerk of this Court as to additional background information with respect to the procedural history of the present action.

Respondent Sentry Title Co., Inc. filed a Brief in Opposition to the Petition for a Writ of Certiorari on October 29, 1984.

Petitioner Ward hereby files this Brief In Reply to the Respondent's brief in opposition.

II. ARGUMENT

1. The Review Which Petitioner Rightfully Seeks Herein is Plainly an *Erie*-Justified Review of Whether a Circuit Court May Render a Decision on a State Law Issue Diametrically Opposed to the Decisions of a State's Highest Court on the Exact Issue.

Respondent's attempt to characterize this Petition for a Writ of Certiorari as merely a request for this Court ". . . to review the full evidentiary record and inferences that might be drawn and substitute its judgment of the facts for that reflected in the two appeals court opinions,"[1] is plainly without merit.

To the contrary, an examination of the Petition as well as Appendix E, a graphic demonstration[2] of the irreconcilable conflict between the Court of Appeals decisions and the Texas Supreme Court cases on the exact issue plainly indicates that the

---

[1]Respondent's Brief in Opposition at 5; see generally, Respondent's Brief in Opposition at 3-7.

[2]Importantly, while the Respondent even recognized that the "spread sheet . . . is interesting," the Respondent in no way rebutted the analysis specifically provided by Appendix E.

legal[3] ruling of the Court of Appeals is diametrically opposed to the Texas Supreme Court's decision as to the appropriateness of imposing a constructive trust in instances where a fiduciary relationship is directly related to and encompasses the property at issue.[4] Thus, rather than constituting an appeal wherein Petitioner merely disagrees with the factual determinations of the Court of Appeals, this appeal clearly presents the important question of whether there is still life for *Erie*, since the "critical"[5] legal determination of the Court of Appeals is diametrically opposed to precise Texas Supreme Court precedent, and indeed prior panel decisions of the Fifth Circuit, on the exact legal issue.

Accordingly, as admitted by the Respondent:

> Petitioner's argument that "where a *federal Court's determination* of a state law issue is *diametrically opposed* to the decisions of a *state's highest court on that exact issue*, this Court has granted certiorari. . .", is certainly a correct exposition.

Respondent's Brief In Opposition at 6.

2. Respondent Totally Failed to Distinguish the Texas Supreme Court and Fifth Circuit Authorities Relied Upon

---

[3]Indeed, as repeatedly demonstrated in the Petition, the Court of Appeals did not even challenge or take issue with the pertinent factual rulings of the District Court.

[4]*General Talking Pictures Corp. v. Western Electric Co.*, 304 U.S. 175 (1937), and *Southern Power Co. v. Public Service Company*, 263 U.S. 508 (1923), cited by Respondent are therefore inapplicable to the instant case, since both those cases, involved petitions which raised factual questions. See note 3 above.

[5]As specifically stated by the Court of Appeals, the "critical" issue in this case is the question of the sufficiency of prior fiduciary relationships for purposes of supporting imposition of constructive trusts. *Harris v. Sentry Title Co.*, 727 F.2d 1368, 1370, (5th Cir. 1984), quoting earlier Opinion, 715 F.2d 941,946 (5th Cir. 1983) (hereinafter referred to as "Sentry Title Co."). As extensively discussed in the Petition, the Court of Appeals held that such a prior fiduciary relationship must be unrelated to the transaction at issue, while Texas Supreme Court precedent holds that the prior fiduciary relationship must encompass the transaction at issue. The Court of Appeals thus rejected the sufficiency of the prior fiduciary relationship in this matter because it encompasses the subsequent acquisition at issue herein.

by Petitioner. These Authorities Cannot be Distinguished Since the Court of Appeals Decision Ruling That a *Prior Fiduciary Relationship* Must be *Unrelated* to the Transaction at Issue to be Sufficient to Support Imposition of a Constructive Trust is Irreconcilable and Diametrically Opposed to Texas Supreme Court and Fifth Circuit Precedent Holding that a Prior Fiduciary Relationship *Directly Encompassing* the Transaction at Issue is Sufficient to Support Imposition of a Constructive Trust.

Respondent's attempts to distinguish the authorities relied upon by Petitioner on such grounds as absence of a written agreement encompassing the acquisition of the property at issue, or absence of a formal or "technical" fiduciary relationship, ignore the fact that the Court of Appeals *specifically accepted* the findings of the District Court that the acquisition plan to purchase the 490 acres *constituted a prior fiduciary relationship* which encompassed the subsequent acquisition of the property at issue.

For example, the Court in *Rankin v. Naftalis*,[6] *Huffington v. Upchurch*,[7] and *Palmer v. Fuqua*,[8] merely looked to the written agreements for purposes of determining whether the parties stood in a fiduciary relationship. The Courts further reviewed the written agreements solely for the purpose of determining whether that fiduciary relationship encompassed the transaction at issue.

The question of the existence or nonexistence of written agreements in this suit is plainly irrelevant since the Court of Appeals accepted the fact that the oral agreement[9] and circumstances surrounding the plan to acquire the 490 acres *constituted a fiduciary relationship* and that the *fiduciary relationship encompassed* the subsequent acquisition of the property at

---

[6]557 S.W. 2d 940 (Tex.1977).

[7]523 S.W.2d 44 (Tex.Civ.App. 1975); 532 S.W.2d 576 (Tex. 1976).

[8]641 F.2d 1146 (5th Cir. 1981).

[9]A Fifth Circuit panel, in *Palmer*, likewise found that "[a]s long as a fiduciary relationship which encompasses the property at issue is established, a constructive trust may be imposed *irrespective of a failure to meet the requirement of the Statute of Frauds.*" *supra*, at 1160. (Emphasis supplied).

issue. Indeed, this was the very basis for the District Court's ruling imposing a constructive trust.

Importantly, therefore, *the crux of this case*, and the legal issue which is irreconcilable and indistinguishable, is that contrary to the above Texas Supreme Court and Fifth Circuit authorities recognizing the appropriateness of imposing constructive trusts where there is a fiduciary relationship encompassing the transaction at issue, the Court of Appeals herein ruled that the above prior fiduciary relationship was not sufficient since it encompassed and was not *unrelated*[10] to the transaction at issue.

Indeed, we would note that Respondent has confirmed these irreconcilable and diametrically opposed legal concepts regarding sufficient prior fiduciary relationships, by arguing for example, "'. . . the prior dealings between the parties must be completely separate from the subject transaction . . .'"[11]

Likewise, in addressing Respondent's discussion of *Ginther v. Taub*,[12] it is apparent that Respondent has misread the significance of the most recent decision of the Texas Supreme Court regarding the law of constructive trusts. While Respondent correctly asserts that the Court in *Taub* imposed a constructive trust on the basis of fraud,[13] the Respondent ignores the fact that in discussing prior fiduciary relationships sufficient to support imposition of constructive trusts, the Texas Supreme Court recognized the *Rankin* line of authorities, *supra*, as controlling. As previously discussed in detail in the Petition for Certiorari, and as demonstrated in Appendix E, the *Rankin* line of authorities affirmatively recognize the sufficiency of prior fiduciary relationships for purposes of imposing constructive trusts where the prior

---

[10]*Sentry Title Co., supra* 715 F.2d at 948; 727 F.2d 1370.

[11]Respondent's Brief in Opposition at 17. Please refer to the Petition for a Writ of Certiorari at note 28, at 11-12 for an explanation of Respondent's apparent misreading of Texas Supreme Court precedent.

[12]27 Tex.Sup.Ct.J. 488 (1984) (hereinafter referred to as *Taub*).

[13]Another basis for imposing constructive trusts aside from instances where there is a breach of a prior fiduciary relationship encompassing the transaction at issue.

fiduciary relationships pertaining to acquisition of property directly encompass, as here, the subsequent acquisition of the property at issue.

Finally, in a misleading attempt to circumvent the precisely defined irreconcilable conflict between the Court of Appeals decision and Texas Supreme Court precedent, Respondent has placed unsupported emphasis on whether the prior dealings between the parties was sufficiently long-standing to warrant recognition of a fiduciary relationship. This attempt is not only patently unjustified in light of the Court of Appeals affirmative ruling that its decision was not based on whether the prior relationship was sufficiently long-standing,[14] but is likewise immaterial in light of the previously discused Circuit Court's specific acceptance, without dispute, that a fiduciary relationship exists between the parties herein, encompassing the subsequent acquisition of the property at issue.

3. A Review of the Present Action in the Context of All of the Circumstances Involved Clearly Shows That There Has Been No Abuse of Process, But Rather, That In Light of the Intervening Decision of the Texas Supreme Court Citing the Controlling Line of Authorities on the "Critical" Issue In This Case, Due Process Requires Review by This Court.

While Petitioner is mindful that it does not have to educate this Court on the concept of due process and procedural fairness,[15] the particular circumstances[16] involved herein clearly show that there has been no abuse of process by Petitioner.

---

[14]In fact, the Court of Appeals specifically stated that the issue regarding the sufficiency of prior fiduciary relationships is the "critical" issue in this case. *Sentry Title Co.*, 727 F.2d 1368, 1369-1370 (5th Cir. 1984).

[15]Petitioner respectfully submits that its reliance on precedent of this Court clearly setting forth the "flexible" and "relative" aspects of the due process concept is justified under the procedural background of this case as set forth in detail in Petitioner's Supplement to Petition for a Writ of Certiorari. See, e.g., *Kremer v. Chemical Construction Corp.*, 456 U.S. 461, 483 (1982); *Lassiter v. Department of Social Services*, 452 U.S. 18, 24 (1981); *Carey v. Piphus*, 435 U.S. 247, 266 (1978).

[16]See Supplemental Brief of Petitioner providing additional procedural background information of this case.

Importantly, the sole reason that Petitioner returned to the Court of Appeals[17] after the Texas Supreme Court issued its decision in *Taub*, but before the mandate issued from the Court of Appeals, was simply because the *Taub decision brought to light the fact that the Court of Appeals decisions are diametrically opposed to and in irreconcilable conflict with the controlling Texas law regarding prior fiduciary relationships sufficient to support imposition of a constructive trust. Thus, it was the intervening decision in Taub*, and not a desire on the part of Petitioner to vexatiously delay or abuse the judicial process,[18] that gave rise to further proceedings in the Circuit Court which are appealed from in the Petition for a Writ of Certiorari.

In fact, it was the very action of the Court of Appeals in refusing to even allow Petitioner to file a brief presenting the merits of the conflict issue in light of an intervening Texas Supreme Court decision that gave rise to the question of whether Petitioner has been afforded the full breadth of procedural due process.[19]

Importantly, Respondent mischaracterizes Petitioner's present request for review by this Court as being one without merit "designed simply to gain time." Respondent's Brief in Opposition at 23. Petitioner respectfully submits, however, that this is not the case. Rather, Petitioner has proceeded to this Court relying in part on those cases similar to the instant one, where this Court having reviewed the case, has at the very least remanded it to

---

[17]As noted by Petitioner in the Petition for Certiorari, the procedural history of the present case is similar to that of *Witchita Co. v. City Bank*, 306 U.S. 103 (1938) a case likewise involving important questions regarding the law of fiduciary relations for commercial transactions in Texas, where despite the fact that the Court of Appeals had denied two rehearings, the Supreme Court granted certiorari on the basis of *Erie*.

[18]Petitioner would note, that although the sum of money involved in the present action is not an insignificant one even to such a successful businessman as Petitioner, it is the principle presently condoned by the Circuit Court that "**first time out as a fiduciary doesn't count,**" that has fueled Petitioner's attempts to challenge such a policy.

[19]See, e.g., *Western Pacific Railroad Case*, 345 U.S. 247 (1952), a case reviewing whether procedurally, an en banc issue had been appropriately considered by the Circuit Court.

the Court of Appeals in light of an intervening state Court decision relevant to the critical issue involved. See, e.g., *Mills v. Rogers*, 102 S.Ct. 2442 (1982); *Lehman Brothers v. Schein*, 416 U.S. 386 (1973); *Nolan v. Transocean Airlines*, 365 U.S. 293 (1961).

CONCLUSION

In the interest of preserving the principles of *Erie* promoting a system of "cooperative judicial federalism," of due process, and in disapproval of an unprecedented and unjust equitable policy which would allow individuals to violate a fiduciary relationship encompassing the very transaction which brings the parties before the Court, Petitioner respectfully requests that this Petition for a Writ of Certiorari be granted.

Respectfully submitted,

Hiram C. Eastland, Jr.

HIRAM C. EASTLAND
Eastland Law Office
600 E. Amite Street
Jackson, Mississippi 39202

CERTIFICATE OF SERVICE

I, Hiram C. Eastland, Jr., one of the attorneys for Petitioner herein, am a member of the bar of the Supreme Court of the United States, hereby certify that on the 19th day of November 1984, I served a true and correct copy of Petitioner's foregoing Reply to Brief In Opposition to Petition for Writ Certiorari on the several parties hereto by mailing three copies of said document by United States mail, in duly addressed envelopes, with postage prepaid, to each of the following persons:

1. J. Albert Kroemer, Esq.
   J. Michael Tibbals, Esq.
   Vetter, Bates, Tibbals, Lee & DeBusk
   2648 One Main Place
   Dallas, Texas 75250
   Attorneys for Respondent

2. Charles O. Shields, Esq.
   Shields, Blankenship, McCrory & Noble
   720 Preston State Bank Building
   Dallas, Texas 75225
   Attorneys for Amicus Curiae,
   Greater Dallas Board of Realtors, Inc.

3. David Crump, Professor of Law
   South Texas College of Law
   1303 San Jacinto Street
   Houston, Texas 77002
   Attorney for Amicus Curiae,
   Texas Independent Producers and
   Royalty Owners Association

I further certify that all parties required to be served have been served.

Hiram C. Eastland, JR.

Hiram C. Eastland, Jr.